

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

KENNETH KELLEY,

Plaintiff,

v.

AMY MACDOWELL, et al.,

Defendants.

CASE No. 2:21-cv-27

HON. ROBERT J. JONKER

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**ORDER APPROVING AND ADOPTING**  
**REPORT AND RECOMMENDATION**

Before the Court is the Magistrate Judge's Report and Recommendation filed on November 8, 2021. (ECF No. 31). The time permitted for objections to the Report and Recommendation has elapsed. Plaintiff has filed a combined motion to compel discovery and for a court appointed attorney (ECF No. 32) but he has not filed objections or otherwise responded to the Magistrate's Report and Recommendation under 28 U.S.C. § 636(b)(1)(C). To the extent Plaintiff's motion can be construed as an objection to the Report and Recommendation, it is unavailing. The Report and Recommendation thoroughly documents the record and analyzes the factual and legal basis for concluding Plaintiff failed to exhaust a First Amendment Retaliation theory.

**ACCORDINGLY, IT IS ORDERED** that the Report and Recommendation of the Magistrate Judge (ECF No. 31) is **APPROVED AND ADOPTED** as the opinion of the Court.

**IT IS FURTHER ORDERED** that Defendant Ford's Motion for Partial Summary Judgment (ECF No 21) is **GRANTED**. Plaintiff's First Amendment Retaliation claim is **DISMISSED WITHOUT PREJUDICE**.

This case shall proceed only on Kelley's Eighth Amendment claim. The motion to compel (ECF No. 32) shall remain pending for a decision on the merits by the Magistrate Judge,

Dated: December 30, 2021

/s/ Robert J. Jonker

ROBERT J. JONKER

CHIEF UNITED STATES DISTRICT JUDGE